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Master Thesis Defense

Entitled

The principle of the transcendence of the Constitution and the mechanism for its preservation
in the United Arab Emirates

By

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Abstract

The study concluded that the constitution, which is the basis of all legal activities practiced by the state, is superior to all legal rules that make up the legal system in the United Arab Emirates. The manifestations of the supremacy of the constitution are represented in two aspects: The objective transcendence that proves for all constitutions, both flexible and rigid, and does not have legal effect, and the formal transcendence that prove only for rigid constitutions, which require special procedures to be followed to amend them, so that the legislative authority is not able to manipulate the constitutional rules and amend them according to its whims.

The study showed that oversight of the constitutionality of laws is one of the most important mechanisms for preserving the supremacy of the constitution, which may be exercised by a body with a political formation or through the judiciary. It also showed the importance of the role of judicial oversight on the constitutionality of laws, and presented it as the dominant method in constitutional oversight, and that the United Arab Emirates adopts the system of judicial oversight in its central form, as it is assumed by the Federal Supreme Court, as it is the supreme court in the judicial system of the state, whose ruling enjoys absolute authority and that all must obey it.

The study concluded that the constitutional texts have special features and include provisions that are not included in other legal rules, so they are at the fore of these legal rules and are distinguished by their supremacy in confronting them. And the supremacy of constitutional texts over other laws will have no value if the legislative authority is able to change or amend the provisions of the constitution through procedures that change or modify ordinary laws.

The study recommended that the constitution should include an explicit text in it that includes expanding the scope of oversight to include the defect of deviation from the legislative authority, given that ensuring the effectiveness of constitutional oversight requires that the scope of court oversight is not limited to the apparent meaning of the text. And that the trial court, before which the unconstitutionality is raised, should study the extent of the seriousness of the argument in depth, so as to ensure that texts whose unconstitutionality may be suspected are not automatically referred to. And the necessity of publishing rulings issued by the Federal Court in the field of constitutional oversight in periodicals or special publications. And to consider the possibility of establishing a specialized constitutional court in the United Arab Emirates entrusted with the task of monitoring the constitutionality of laws and regulations, so that it is in charge of adjudicating constitutional disputes.

Keywords: the constitution - objective transcendence - formal transcendence - the mechanism for preserving the transcendence of the constitution - oversight on the constitutionality of laws - judicial oversight on the constitutionality of laws - the Federal Supreme Court.